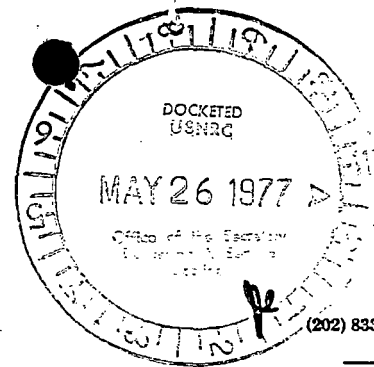


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In the Matter of Public Service Electric & Gas Company
(Salem Nuclear Generating Station, Units 1 and 2)
Docket Nos. 50-272 and 50-311

Gentlemen:

Public Service Electric and Gas Company, licensee in the captioned proceeding, in reliance upon the Atomic Safety and Licensing Board's letter of May 4, 1977 in Union Electric Company (Callaway Plant, Units 1 and 2), will not submit an opening brief in response to ALAB-392. However, as requested by the Appeal Board of all parties, attached hereto is Licensee's Submission Regarding Footnote 7 of ALAB-392.

Sincerely,

Troy B. Conner, Jr.
Counsel for the Licensee

TBC:kf

cc. Per service list

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

RELATED CORRESPONDENCE

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of)
)
PUBLIC SERVICE ELECTRIC &)
GAS COMPANY)
)
(Salem Nuclear Generating)
Station, Units 1 & 2))
)
)

Docket No. 50-272
50-311



LICENSEE'S SUBMISSION REGARDING
FOOTNOTE 7 of ALAB-392

In ALAB-392, ^{1/} relating to the Appeal Board's consideration of the effect of the inclusion of the revised values associated with the uranium fuel cycle on individual cost/benefit analyses for a number of reactors, the Appeal Board noted that "[s]ome of the members of the panel ^{2/} are concerned about the implications, in terms of the application of the numerical values contained in the revised Table S-3 of an observation in the Statement of Considerations which accompanied the proposal of the Interim Rule." Specifically, the Appeal Board listed its areas of concern as follows:

^{1/} Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), et al., ALAB-392, 5 NRC ____, Slip op. at 14 (April 21, 1977).

^{2/} For purposes of ALAB-392, the various panels of the Appeal Board were consolidated.

"uncertainties in areas such as the effect of waste presence on repository stability; the probabilities and consequences of various types of intrusive acts by humans; the availability of data to be used in modeling studies; the design and regulatory actions needed to minimize possibilities of repository failure; projection of future societal habits and demography, and, finally, the relative importance of the various potential initiating events."^{3/}

While the panel stated that the above expressed concern was not necessarily shared by a majority of the Appeal Board members, it requested the parties "to include in their submissions a discussion of the significance which, in light of the Commission's notation, should be deemed to attach to the value placed by the Interim Rule upon the newly-established category of 'transuranic and high level wastes (deep).'"^{4/}

The Appeal Board continued:

"In other words, given the uncertainties to which the Commission has referred with regard to the possible release of the buried high level wastes, what weight should be attributed (in striking the cost/benefit balance for each individual reactor) to the value assigned to the solidified waste which would be generated during that reactor's operation.?"^{5/}

^{3/} 41 Fed. Reg. 45850-1. It should be noted that in the next paragraph the Commission stated that "[w]here data necessary for a complete quantitative assessment of impact is lacking, the Commission's expert judgement must be brought to bear on the information available."

^{4/} ALAB-392, n. 7, Slip op. at 14. See 41 Fed. Reg. 45849, 45850-51 (October 18, 1976).

^{5/} ALAB-392, n. 7, Slip op. at 14.

If there were any questions remaining based upon a reading of the proposed interim fuel cycle rule, the Commission has already addressed and disposed of these questions in its Statement of Considerations published with the effective interim fuel cycle rule. Moreover, as further indicated in its charge to the Appeal Board, the Commission has itself made the determination that "the values in the old rule and those in the interim rule are not substantially different " CLI-77-10, 5 NRC at ____, Slip op. at 3 (April 1, 1977).

In its Statement of Considerations accompanying the interim rule, the Commission weighed uncertainties in its interim rule and the risk of proceeding "on the basis of information which may later be called into question in a final rulemaking proceeding" against a hiatus in LWR licensing.^{6/}

The Commission concluded that the underlying Task Force Report contained and documented numerous conservatisms applied to the analysis of environmental impacts and waste management and reprocessing activities. With regard to those few cases

^{6/} 42 Fed. Reg. 13804.

where detailed estimates could not be made, the Commission found that:

"the Task Force exercised its expert judgment to reach a best estimate. Since a calculation could not be made, the conservatism of these few judgments cannot absolutely be established. However, it is the Commission's view that the impacts estimated on expert judgments are quite small in any case and that adequate conservatism has been applied." ^{7/}

The Commission stated it would be "reluctant to proceed if it believed the values in Table S-3 and the information from which they are derived, were called into question to any significant degree by substantial evidence, but this is not the case" ^{8/} The Commission elaborated on its decision-making process as follows:

"To some extent, as noted above, the setting of values in Table S-3 involved making 'policy judgments where no factual certainties exist or where facts alone do not provide the answer.'" Industrial Union Department, AFL-CIO v. Hodgson, 499 F.2d 467, 476 (D.C. Cir. 1974).

"In such cases--especially where the evidence is 'difficult to come by, uncertain, or conflicting because it is on the frontiers of scientific knowledge'--it is appropriate for the Commission to proceed to apply its expertise; its conclusions must be rationally justified, not based on hunches or wild guesses, but conclusions may be drawn 'from

^{7/} Id. at 13805.

^{8/} Id.

theoretical projections from imperfect data, from probative preliminary data not yet certified as 'fact', and the like." Ethyl Corp. v. EPA, 541 F.2d 1, 28 (D.C. Cir. 1976); see also Amoco Oil Co. v. EPA, 501 F.2d 722 (D.C. Cir. 1974). "The Commission may, as to some extent it has done here, make probabilistic assessments that must suffice until data becomes 'sufficiently quantifiable to yield to meaningful analysis.'" Union of Concerned Scientists, supra, 499 F.2d at 1093. 9/

It concluded that there was "no perceived need for the Commission to wait for site specific information or to wait for ERDA's generic environmental impact statement on high level waste management." The situation was summarized as follows:

"In some areas--including critical areas where a substantial measure of expert judgment had to be applied--it is unlikely that substantial new information of a quantitative nature will be available for years. As the Court said in Citizens for Safe Power v. NRC, 524 F.2d 1291, 1297 (D.C. Cir. 1975):

'Absolute or perfect assurances are not required by (the Atomic Energy Act), and neither present technology nor public policy admit of such a standard. It was for the Commission to arrive at a rational, practical and principled conclusion upon the basis of reasonably available evidence.'" 10/

9/ Id.

10/ Id.

The interim rule does not deal with a safety question, but rather attempts to quantify the environmental impact of re-processing and waste management. In the Statement of Considerations, the Commission quoted from Union of Concerned Scientists v. AEC, 499, F.2d 1069 (D.C. Cir. 1974) that "[C]onservative analysis based on available expert information' is even more appropriate in such a case where the goal is not to reach a conclusion whether a level of safety has been made, but rather to develop values for use in environmental cost/benefit analyses." 11/

We, therefore, submit that for purposes of striking the cost/benefit balance in individual cases, the Appeal Board may not go outside the table contained the Commission's interim fuel cycle rule; no additional account for "uncertainty" need be factored in the individual cost/benefit analyses, inasmuch as such uncertainties were considered by the Commission in

11/ Id.

the development of the rule. However, if doubts remain as to correct application of the rule, we would suggest that the question be certified to the Commission.

Respectfully submitted,

CONNER AND MOORE

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Mark J. Wetterhahn
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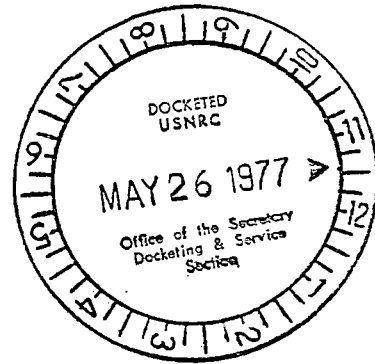
May 23, 1977

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

RELATED CORRESPONDENCE

In the Matter of)
)
PUBLIC SERVICE ELECTRIC)
& GAS COMPANY)
)
(Salem Nuclear Generating)
Station, Units 1 and 2))

Docket Nos. 50-352
50-353



CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Submission Regarding Footnote 7 of ALAB 392," dated May 23, 1977, in the captioned matter, has been served upon the following by deposit in the United States mail this 23rd day of May, 1977:

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